

dairy plant operator shall denature or take responsibility for disposing of the rejected bulk load in a manner that precludes its use for human food.

(6) REJECTED BULK LOAD; DAIRY PLANT RECOVERY FROM PRODUCERS. (a) *Dairy plant loss recovery.* Except as provided in (k), if a dairy plant operator properly rejects a bulk load of milk under sub. (4), the dairy plant operator shall recover the value of that bulk load from producers whose milk samples, representing milk shipments contained in that bulk load, test positive for drug residue under sub. (3). The dairy plant operator shall recover what would have been the value of the bulk load, had the load not tested positive for drug residue. The dairy plant operator shall also recover any additional bulk load disposal, transportation and testing costs that the dairy plant operator incurs because the bulk load tests positive for drug residues.

(b) *Pro rata recovery.* Except as authorized under par. (k), the dairy plant operator shall recover, from each offending producer under par. (a), a pro rata share of the total recovery amount under par. (a). The pro rata recovery from each offending producer shall be based on the size of that producer's shipment compared to those of other offending producers in the same bulk load. If there is only one offending producer, the operator shall recover the entire amount from that producer.

(c) *Recovery deadline.* The dairy plant operator shall recover the full amount owed by each offending milk producer under par. (b) within 90 days after that producer's milk sample tests positive for drug residue under sub. (3). If the dairy plant operator fails to recover the full amount within that time period, the dairy plant operator shall give the department a written explanation.

1 (d) *Payroll deduction.* A dairy plant operator may deduct the amount owed by an offending
2 milk producer under par. (b) from the dairy plant operator's payroll obligation to that offending
3 milk producer.

4 (e) *Notice of deduction.* A dairy plant operator shall give a milk producer at least 30 days
5 prior written notice of any deduction under par. (d), unless the milk producer transfers to another
6 dairy plant operator. The notice shall state all the following:

- 7 1. The basis for the deduction.
- 8 2. The total amount of the deduction.
- 9 3. The date on which the dairy plant operator will make each deduction.
- 10 4. That the dairy plant operator will meet with the milk producer to discuss the deduction, at
11 the milk producer's request.

12 (f) *Meeting to discuss recovery.* A dairy plant operator shall meet with a milk producer, at
13 the milk producer's request, to discuss the dairy plant operator's recovery from that milk producer
14 under this subsection. The dairy plant operator shall meet with the milk producer within 10 days
15 after the milk producer requests the meeting, unless the milk producer requests a later meeting
16 date. If the milk producer contests the validity of the recovery, and the matter is not resolved,
17 the dairy plant operator shall notify the milk producer that the milk producer may request a
18 hearing before the department under par. (g).

19 (g) *Hearing request.* If a milk producer contests the validity of a dairy plant operator's
20 recovery under this subsection, and if the parties do not resolve the matter after meeting under
21 par. (f), the producer may request a hearing before the division. A request for hearing does not
22 automatically stay a recovery under this subsection.

1 (h) *Informal hearing.* If a milk producer requests a hearing under par. (g), the division shall
2 hold an informal hearing by telephone or at the division's nearest regional office. The division
3 shall hold the informal hearing within 10 business days after the division receives the hearing
4 request, unless the milk producer agrees to a later hearing date. The division shall include the
5 producer and the dairy plant operator in the informal hearing.

6 (i) *Formal hearing.* If an informal hearing under par. (h) does not resolve the matter, a milk
7 producer may request a contested case hearing before the department under ch. ATCP 1 and ch.
8 227, Stats. A request for hearing does not automatically stay a recovery under this subsection. If
9 the department grants a milk producer's request for hearing, the department shall include the milk
10 producer and the dairy plant operator as parties to the hearing.

11 (j) *Invalid recovery.* If the department finds that a dairy plant operator's recovery under this
12 subsection is invalid, the department may prohibit the recovery or order the dairy plant operator
13 to repay the producer. The division may issue an order under this paragraph after the division
14 holds an informal hearing under par. (h). If the division issues an order under this paragraph, the
15 dairy plant operator may request a contested case hearing under ch. ATCP 1 and ch. 227, Stats.,
16 to contest the division's order. A request for hearing does not automatically stay the division's
17 order.

18 (k) *Waiver of recovery.* A dairy plant operator may waive the requirement to recover the cost
19 of a bulk load of milk that has been properly rejected because drug residues have been found in
20 the milk, if all the following apply:

- 21 1. The load contains milk from only one producer.
- 22 2. The milk has not been commingled with milk from another producer.
- 23 3. The milk has not been unloaded from the tanker into which it was originally loaded.

1 4. The milk producer properly disposes of the load.

2 5. The load of milk is properly reported to the department as positive for drug residue.

3 (7) PRODUCER MILK SHIPMENTS REJECTED. (a) *Dairy plant to reject.* A dairy plant operator
4 shall immediately notify a milk producer, and shall reject that producer's milk shipments as
5 required under par. (b), if any of the following occurs:

6 1. A sample of the producer's milk under sub. (1) tests positive for a drug residue.

7 2. A sample of the producer's milk under sub. (3) tests positive for a drug residue.

8 3. A sample of the producer's milk tests positive for a drug residue after that milk has been
9 commingled with milk from other producers, regardless of whether the drug residue test is
10 required under this chapter.

11 (b) *Producer milk rejected.* If a dairy plant operator is required to reject producer milk
12 shipments under par. (a), the dairy plant operator shall reject all milk produced on that dairy farm
13 until a sample of that milk tests negative for drug residues by the same or an equivalent test, at a
14 laboratory that is certified under s. ATP 77.03 (2) (c) to perform confirmatory tests.

15 (c) *Rejected milk; use prohibited.* If a dairy plant operator rejects a producer's milk under
16 par. (b), no person may do any of the following:

17 1. Ship, collect, or use that milk for human food.

18 2. Comingle that milk with milk from any other producer.

19 (d) *Transfer between dairy plants.* If a dairy plant operator rejects a producer's milk under
20 par. (b), the milk producer may not ship milk to another dairy plant until a dairy plant operator
21 tests that producer's milk and the milk tests negative for drug residues on the same or an
22 equivalent test, at a laboratory that is certified under s. ATP 77.03 (2) (c) to perform
23 confirmatory tests.

1 **(8) REPORTING DRUG RESIDUE FINDINGS; BULK LOADS.** Within 2 hours after a bulk load of
2 milk tests positive for a drug residue under sub. (2), the dairy plant operator shall report the drug
3 test result to the division by telephone, electronic mail, or facsimile (FAX) transmission. The
4 dairy plant operator shall confirm the report in writing, in a form approved by the division,
5 within 3 business days after the drug residue test is completed. The report shall indicate the
6 result of the drug residue test, the volume of milk contained in the bulk load, and the dairy plant's
7 disposition of that milk.

8 **(9) REPORTING DRUG RESIDUE FINDINGS; PRODUCER MILK SHIPMENTS.** (a) *Dairy plant to*
9 *report.* Whenever any of the following occurs, the dairy plant operator that performs the drug
10 residue test shall report the test result to the division under par. (b):

- 11 1. A milk producer sample under sub. (1) tests positive for a drug residue.
- 12 2. A milk producer sample under sub. (3) tests positive for a drug residue.
- 13 3. A sample of a producer's milk tests positive for a drug residue after that milk has been
14 commingled with milk from other producers, regardless of whether the drug residue test is
15 required under this chapter.

16 (b) *Form of report.* Whenever a dairy plant operator is required to report a drug residue test
17 result under par. (a), the dairy plant operator shall report that result to the division by telephone,
18 electronic mail, or facsimile (FAX) transmission. The dairy plant operator shall make the report
19 within 2 hours after the drug residue test is completed. The dairy plant operator shall confirm the
20 report in writing, on a form approved by the division, within 3 business days after the drug
21 residue test is completed.

22 **(10) INSPECTION BY DIVISION; REINSPECTION FEE.** The division may, in its discretion, inspect
23 a dairy farm in response to any positive drug residue test report under sub. (8) or (9). The

division shall charge a reinspection fee for the inspection under s. ATCP 65.02 (19). The division shall not charge a reinspection fee if it makes its inspection more than 3 weeks after the dairy plant operator reports the drug residue test result to the division.

(11) DRUG RESIDUE TEST RESULTS. (a) *Positive test result; general.* For purposes of this section and s. ATCP 65.923, a drug residue test is considered positive if the detected amount of drug residue exceeds the action level specified for that drug under par. (b). The action levels under par. (b) do not establish legal tolerances for drug residues in milk, nor do they preclude the department from taking enforcement action where drug residues are present at levels below these action levels.

(b) *Specified drug tests; positive test result.* In a test for any of the following drugs, the action level is exceeded whenever the drug residue level found in the test exceeds the level specified below:

Drug	Action Level (ppb)
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Ampicillin	10
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Amoxicillin	10
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Cephapirin	20
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Ceftiofur	100
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Cloxacillin	10
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Neomycin	150
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Novobiocin	100
------------	-----

Penicillin G	5
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Sulfadimethoxine	10
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Tylosin	50
---------	----

1 Erythromycin* 50
2 Gentamicin* 30
3 Dihydrostreptomycin* 125
4 Sulfachloropyridazine* 10
5 Sulfadiazine* 10
6 Sulfamerazine* 10
7 Sulfamethazine* 10
8 Sulfamethizole* 10
9 Sulfanilamide* 10
10 Sulfapyridine* 10
11 Sulfaquinoxaline* 10
12 Sulfathiazole* 10
13 Tetracyclines* 300

14 **Note:** Action levels specified under this paragraph are based on tolerances or "safe levels" specified by the
15 United States food and drug administration, and identified in a memorandum from FDA's Milk Safety Branch, M-I-
16 05-5, September 27, 2005. A copy of the memorandum is on file with the department, and is available upon request.
17 For drugs identified with an asterisk (*), the levels in this paragraph are based on "safe levels" specified by
18 FDA. "Safe levels" are merely enforcement guides and do not constitute legal tolerances. "Safe levels" are not
19 binding on the courts or the department. They do not limit the department's discretion in any way, and they do not
20 protect milk producers or milk itself from enforcement action. "Safe levels" do not constitute animal drug
21 tolerances under section 512 (b) of the federal food, drug and cosmetic act.
22

23 (c) *Test result presumed valid.* For purposes of this section and s. ATCP 65.923, whenever a
24 dairy plant operator reports a positive test result to the division under sub. 9, that test result is
25 presumed to be valid. The milk producer may appeal the test result in an informal hearing under
26 s. ATCP 65.928.

27 (12) **LABORATORY REPORTING.** A laboratory that performs tests under this section for a dairy
28 plant operator may report the test results for the dairy plant operator.

(13) TIMELY TESTING. Drug residue tests required under this section shall be completed within 72 hours after the tested milk, or any portion of the tested milk, was first collected from a dairy farm.

Note: If a drug residue test is performed on a bulk load of milk collected from several dairy farms, the test must be completed within 72 hours after the bulk milk weigher and sampler collects milk from the first farm. Confirmation of positive drug residue screening tests, at a different laboratory than the laboratory which performed the screening tests, as required under s. ATCP 65.78 (1)(b) 3., must be completed within the same 72-hour period.

ATCP 65.74 Milk and dairy products; quality standards. (1) MILK HELD AT DAIRY PLANT; BACTERIAL COUNT. The bacterial count of commingled grade A milk held at a dairy plant before pasteurization may not exceed 300,000 per ml. The bacterial count of grade B milk held at a dairy plant before pasteurization or processing may not exceed 750,000 per ml.

(2) PASTEURIZED GRADE A DAIRY PRODUCTS.

(a) Bacterial counts in pasteurized grade A dairy products other than cultured dairy products may not exceed the following levels:

1. 10,000 per g. for nonfat dry milk.
2. 20,000 per ml., except as provided in subd. 1., and 3.
3. 30,000 per ml. for condensed milk, whey, whey products and dried whey.

(b) Coliform counts in pasteurized grade A dairy products may not exceed 10 per ml. or per gram, except that coliform counts in bulk milk tanker shipments of pasteurized grade A dairy products may not exceed 100 per ml.

(c) In pasteurized grade A fluid milk without added flavors or ingredients other than vitamins, there shall be fewer than 350 milliunits of phosphatase per liter as determined by the Fluorophos ALP method, the Charm Paslite Alkaline Phosphatase method, or another test method approved by the department.

(d) The yeast and mold count of pasteurized cottage cheese may not exceed 10 per gram.

1 **(3) PASTEURIZED GRADE B DAIRY PRODUCTS.** (a) Bacterial counts in pasteurized grade B
2 dairy products, other than cultured dairy products or frozen desserts containing nuts or other
3 inclusions, may not exceed the following levels:

- 4 1. 20,000 per ml., except as provided in subd. 1. or 2.
5 2. 30,000 per ml. for condensed milk, whey, whey products, dried whey, and nonfat dry milk.
6 3. 50,000 per gram for frozen desserts, except that the bacterial count for frozen-dessert
7 mixes may not exceed 20,000 per gram.

8 (b) Coliform counts in pasteurized grade B dairy products other than cultured grade B dairy
9 products may not exceed 10 per ml. or per gram, except that coliform counts in bulk milk tanker
10 shipments may not exceed 100 per ml.

11 **Note:** Cultured grade B dairy products are dairy products, including all natural cheeses, that are produced using
12 natural or added cultures to achieve desired flavor, body, and texture requirements.

13
14 **(4) FORTIFIED DAIRY PRODUCTS.** Whenever milk or a fluid milk product is fortified with
15 vitamin A or D, the fortification shall comply with PMO Appendix O.

16 **(5) PATHOGEN CONFIRMED IN READY-TO-EAT DAIRY PRODUCT; SALE PROHIBITED.** A dairy
17 plant operator may not sell or distribute any ready-to-eat dairy product in which a
18 microbiological test or laboratory analysis has confirmed the presence of a pathogenic organism
19 or toxin.

20 **Note:** Copies of PMO Appendix O are on file with the department and the legislative reference bureau. Copies
21 may be obtained from the department at cost or online at
22 www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk.
23

24 **ATCP 65.76 Milk quality testing. (1) REQUIRED TESTING.** (a) A dairy plant operator
25 shall test raw milk from dairy farms as required under this chapter.

26 (b) A dairy plant operator shall test milk and dairy products held or processed at a dairy plant
27 for compliance with standards specified under s. ATCP 65.74 (1) to (4). The dairy plant operator

1 shall test the milk and dairy products as often as necessary to provide reasonable statistical
2 assurance of compliance.

3 (2) PAYMENT BASED ON MILK COMPONENT TESTS. No dairy plant operator may adjust the
4 price paid to any milk producer based on the results of any milk component test or somatic cell
5 test unless the dairy plant operator does both of the following:

6 (a) Bases the price adjustment on either the arithmetic or weighted average of all test results
7 obtained for that producer during the pay period to which the price adjustment applies. The
8 dairy plant operator shall use the same method for computing average test results for all
9 producers shipping milk to the dairy plant.

10 (b) Tests at least 3 milk shipments from that producer at regular intervals throughout the pay
11 period to which the price adjustment applies, or tests composite samples representing all milk
12 shipments from that milk producer during that pay period.

13 **ATCP 65.78 Certified testers of milk quality and components; test methods. (1)**

14 LABORATORY. (a) Except as provided under par. (b), milk quality tests required under this
15 chapter shall be performed in a laboratory that is both of the following:

- 16 1. Approved by the department to conduct milk quality tests.
17 2. Certified by the department under ch. ATCP 77, or by an equivalent certifying agency in
18 another state, to conduct milk quality tests.

19 (b) A laboratory may perform a drug residue test under s. ATCP 65.72 as a screening test,
20 even though the laboratory is not certified under s. ATCP 77.03 to perform that test as a
21 confirmatory test, if all of the following apply:

- 22 1. The department has approved that laboratory to perform that screening test under s. ATCP
23 77.23.

2. The department has approved the person who performs the screening test under s. ATCP 77.23 (2).

3. A different laboratory performs a confirmatory test if the screening test result is positive for drug residue. The laboratory performing the confirmatory test shall be certified to do so under s. ATCP 77.03. The laboratory shall perform the confirmatory test on the same test sample using the same or an equivalent test method, and shall complete the confirmatory test within the time period specified in s. ATCP 65.72 (8).

(c) The department may withdraw its approval under par. (a) or (b) for cause, including false or inaccurate test results or reports, or failure to conduct tests according to required procedures.

(2) ANALYSTS AND LICENSED MILK COMPONENT TESTERS. (a) Except as provided in par. (b) or (c), no individual may perform a milk test under ss. ATCP 65.70 and 65.72 unless the department has certified that individual under s. ATCP 77.22 to perform that test.

(b) Pursuant to s. ATCP 77.23 (2), the department may approve an individual to perform a drug residue test under s. ATCP 65.72 as a screening test, even though the individual is not certified under s. ATCP 77.22 to perform that test as a confirmatory test.

(c) Bulk load tests for drug residues under s. ATCP 65.72 shall be conducted at the receiving dairy plant by either of the following:

1. An individual approved by the department to conduct drug residue tests.
2. An individual who performs drug residue tests only under the direct supervision of an individual approved and certified under subd. 1.

(d) No person may perform any milk component test unless that person is licensed to perform milk component tests, either as a buttermaker or cheesemaker under s. 97.17, Stats., or as a milk and cream tester under s. 98.145, Stats.

(e) No person may use an automated testing device to perform any milk component test unless that person is trained and qualified to use automated testing devices, and that fact is stated on his or her license under s. 97.17 or 98.145, Stats.

Note: A "milk component test," as defined under s. ATCP 65.01 (35), means a test which determines the amount of milkfat, protein, total solids, solids-not-fat, or other valuable components in milk, and which may affect the price that a dairy plant operator pays a milk producer for milk.

(3) TEST METHODS. Milk testing under ss. ATCP 65.70 and 65.72 shall use test methods prescribed in the applicable FDA 2400 series laboratory evaluation forms, published by the United States department of health and human services, public health service, food and drug administration, which are in effect on February 1, 2008. If no FDA form applies, testing shall be conducted according to methods prescribed in the "Standard Methods for the Examination of Dairy Products," 17th Edition (2004), or in "Official Methods of Analysis of AOAC International," 18th Edition (2005).

Note: Copies of the FDA 2400 series laboratory evaluation forms in effect on February 1, 2008, are on file with the department and the legislative reference bureau. To find out how to obtain a copy of these forms, you may contact the department at the following address:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Food Safety
Laboratory Certification Program
P.O. Box 8911, Madison, WI 53708-8911
Telephone: (608) 224-4712

The American Public Health Association's "Standard Methods for the Examination of Dairy Products," 17th Edition (2004), is on file with the department and the legislative reference bureau and may be obtained from the American Public Health Association, Inc., 800 I Street, NW, Washington, D.C. 20001, telephone 202-777-2742, website www.apha.org.

The "Official Methods of Analysis of AOAC International," 18th Edition (2005), is on file with the department and the legislative reference bureau and may be obtained from AOAC International, 2275 Research Blvd., Rockville, MD 20850, telephone 800-379-2622, website www.aoac.org.

(4) MILK COMPONENT TESTING; LICENSED TESTER. (a) No person may perform any milk component test unless that person is licensed to perform milk component tests, either as a

1 buttermaker or cheesemaker under s. 97.17, Stats., or as a milk and cream tester under s. 98.145,
2 Stats.

3 (b) No person may use an automated testing device to perform any milk component test
4 unless that person is trained and qualified to use automated testing devices, and that fact is stated
5 on his or her license under s. 97.17 or 98.145, Stats.

6 **ATCP 65.80 Test samples. (1) GENERAL.** (a) Whenever a dairy plant operator performs a
7 milk quality test on a bulk milk shipment from a milk producer, the dairy plant operator shall
8 perform that milk quality test on a test sample collected under s. ATCP 82.12.

9 (b) Whenever a dairy plant operator performs a milk quality test on shipment of milk in cans
10 from a milk producer, the dairy plant operator shall perform that milk quality test on a test
11 sample collected under sub. (3).

12 (c) Notwithstanding pars. (a) and (b), a dairy plant operator may use a composite sample
13 under sub. (4) to perform a Babcock test for milkfat, or to perform another milk quality test
14 approved by the division under sub. (4). A composite sample shall be compiled from fresh milk
15 samples collected under par. (a) or (b).

16 (d) This subsection does not apply to a bulk load test for drug residues under s. ATCP 65.72
17 (3).

18 (e) Upon reasonable notice from the division, a dairy plant operator shall provide the division
19 with samples of producer milk collected under s. ATCP 65.38. The division may request
20 samples once every 4 months, or more often as the department considers necessary for animal
21 health and milk quality testing. Every sample shall be marked with the identification number of
22 the individual producer from whom the sample was collected, and shall also indicate the date on

1 which the sample was collected. A sample shall be kept at a temperature of 32° to 40° F (0°F to 4
2 °C) until it is transferred to the custody of the department.

3 (2) TEST SAMPLES REFRIGERATED. At all times prior to testing, a test sample under sub. (1)
4 shall be kept refrigerated at a temperature of 32 to 40° F. (0 to 4° C.). Test samples kept at a
5 dairy plant or testing laboratory shall be kept in a refrigerated storage facility used only for
6 storing test samples and laboratory supplies.

7 (3) COLLECTING TEST SAMPLES FROM SHIPMENTS OF MILK IN CANS. (a) If a producer ships
8 milk to a dairy plant in cans, rather than in bulk, the dairy plant operator shall collect a test
9 sample from each milk shipment immediately after that milk shipment is transferred to the weigh
10 tank at the dairy plant, and before it is commingled with any other milk shipment. The weigh
11 tank shall be constructed so that milk poured into the weigh tank is completely mixed.

12 (b) If a weigh tank is not large enough to accommodate a producer's entire milk shipment, so
13 that multiple weighings are needed, the dairy plant operator shall divide the shipment as evenly
14 as possible between weighings and collect a sample from each weighing. The samples, which
15 shall be of equal volume, shall be combined to form a single sample representing the entire
16 shipment from the producer. The dairy plant operator may not split the contents of any single
17 can of milk between weighings, but shall include all of the contents of that can in the same
18 weighing.

19 (4) COMPOSITE SAMPLES. (a) A dairy plant operator may use a composite sample to perform
20 a Babcock test for milkfat, but may not perform any other milk quality test on a composite
21 sample except with the division's written authorization. A composite sample shall be compiled
22 according to this subsection.

1 (b) A composite sample shall include a representative sample of milk from each of 2 or more
2 milk shipments represented by the composite sample. No composite sample may include milk
3 from more than 16 milk shipments. Each component sample included in the composite sample
4 shall have the same volume, and shall include at least 10 ml. of milk. A composite sample shall
5 include at least 150 ml. of milk.

6 (c) A composite sample container shall have a capacity of at least 240 ml. The composite
7 sample container shall include an effective permanent closure that is attached to the container.
8 The composite sample container shall be marked to identify the producer and the milk shipments
9 represented in the composite sample.

10 (d) A composite sample representing a producer's bulk milk shipments shall be compiled
11 from fresh milk samples collected from those shipments under s. ATPCP 82.12. On the same day
12 that a producer's bulk milk shipment is received by the dairy plant operator, or by 12:00 noon of
13 the following day, the dairy plant operator shall transfer, to the composite sample, at least 10 ml.
14 of milk from the sample collected from that milk shipment under s. ATPCP 82.12.

15 (e) A composite sample representing a producer's shipments of milk in cans shall be
16 compiled from milk samples collected from those shipments according to sub. (3).

17 (f) A dairy plant operator shall preserve a composite sample by adding potassium
18 dichromate, or another preservative approved by the division, to the composite sample. Not less
19 than 100 mg., nor more than 190 mg. of potassium dichromate may be used in each composite
20 sample to obtain a concentration of 20 mg. per 30 ml. of milk in the completed sample.

21 **Note:** Potassium dichromate is available in tablets containing 40 mg. of active ingredient per tablet. The use of
22 these tablets at the rate of one tablet per 2 fl. oz. of milk in a completed composite sample is equivalent to the
23 concentration specified under par. (f). Labeling requirements and limitations on the disposal of milk samples
24 preserved with potassium dichromate are contained in s. ATPCP 30.15 (2) (b).
25

ATCP 65.82 Test methods. (1) GENERAL. Milk quality tests shall be performed using one of the following methods, subject to additional requirements under subs. (2) to (6):

(a) A method described in the American Public Health Association., "Standard Methods for the Examination of Dairy Products," 17th edition (2004).

(b) A method described in the "Official Methods of Analysis of AOAC International," 18th edition (2005).

(c) A method approved in writing by the division.

Note: A laboratory performing milk quality tests must be certified under ch. ATCP 77.

The American Public Health Association's "Standard Methods for the Examination of Dairy Products," 17th edition (2004), is on file with the division and the legislative reference bureau. Copies may be obtained from the American Public Health Association, 800 I Street, NW, Washington, D.C. 20001, telephone 202-777-2742, website www.apha.org.

The "Official Methods of Analysis of AOAC International," 18th Edition (2005), is on file with the division and the legislative reference bureau. Copies may be obtained from AOAC International, 2275 Research Blvd., Rockville, MD 20850, telephone 800-379-2622, website www.aoac.org

(2) MILKFAT TEST METHODS. (a) Milkfat tests shall be performed using the Babcock method, the ether extraction method, or another test method approved by the division. Babcock and ether extraction tests shall be conducted according to the "Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC) International," 17th edition (2000), except as provided under par. (b).

(b) Each milk sample tested by the Babcock method shall be agitated for at least 3 minutes by the use of a mechanical agitator after pipetting the sample and adding sulfuric acid according to the procedure prescribed under par. (a). A reader, such as a needlepoint divider or other mechanical divider, which accurately determines milkfat level in a test bottle shall be used in reading all Babcock tests. All Babcock test readings shall be made against a light-colored surface with adequate natural or artificial light. The Babcock test shall be read to the nearest 0.05% by weight.

1 (3) BACTERIA COUNTS. Bacteria counts required under s. ATCP 65.70 and bacteria counts
2 that may affect the amount paid to a milk producer shall be obtained by means of a standard plate
3 count (SPC), plate loop count (PLC), or petrifilm aerobic count method.

4 (4) DRUG RESIDUES. Drug residue tests required under s. ATCP 65.72 shall be performed
5 according to s. ATCP 65.72.

6 (5) SOMATIC CELLS. Somatic cell counts required under s. ATCP 65.70 (4) and somatic cell
7 counts that may affect the amount paid to a milk producer shall be obtained by means of a direct
8 microscopic somatic cell count or an electronic somatic cell count. The Pyronin Y-Methyl green
9 stain test may be used in place of a direct microscopic somatic cell count or electronic somatic
10 cell count for goat milk, and shall be used to confirm a direct microscopic somatic cell count or
11 electronic somatic cell count on goat milk that exceeds 1,000,000.

12 (6) TESTING DEADLINES. A milk quality test shall be conducted within the time period
13 specified by the test method.

14 **ATCP 65.84 Milk component testing devices. (1) GENERAL.** If an automated testing
15 device is used to perform a milk component test for any milk component, that device shall be
16 calibrated and regularly checked to ensure that it accurately tests for that milk component.

17
18 **(2) CALIBRATION. (a) Requirement.** If an automated testing device is used to test for
19 milkfat, protein, total solids, or solids-not-fat in milk, and if the test results may affect the price
20 paid to a milk producer, the testing device shall be calibrated according to this subsection. The
21 testing device shall be calibrated, for each relevant milk component, by a tester who is licensed
22 under s. 97.17 or 98.145, Stats., to operate that device.

23 **Note:** See s. ATCP 65.78 (2).

1 (b) *Calibration frequency.* A milk component testing device under par. (a) shall be calibrated
2 at all of the following times:

- 3 1. Upon installation.
- 4 2. At regular 3 month intervals after installation.
- 5 3. Immediately after every significant repair or alteration to the testing device.
- 6 4. Whenever the mean difference on a daily performance check under sub. (3) exceeds plus
7 or minus 0.044% for milkfat or protein, or 0.084% for total solids or solids-not-fat.

8 (c) *Calibration procedure.* To calibrate a milk component testing device under par. (a), a
9 tester shall use the device to test a set of calibration samples under par. (d). The milk component
10 testing device shall be adjusted, as necessary, to satisfy all of the following requirements:

- 11 1. The performance error on each calibration sample shall be as near as practicable to zero.

12 The performance error is the difference between the known percentage content of each milk
13 component in the calibration sample, as determined by the sample provider, and the percentage
14 content as measured by the testing device.

- 15 2. The mean difference for the entire set of calibration samples shall be as near as practicable
16 to zero, and shall not exceed plus or minus 0.044% for milkfat or protein, or 0.084% for total
17 solids or solids-not-fat. The mean difference is the sum of the performance errors for the
18 individual calibration samples, divided by the number of samples in the set.

- 19 3. The standard deviation of test results, calculated for the set of calibration samples
20 according to the formula set forth in the "Official Methods of Analysis of AOAC International,"
21 18th edition (2005), section 969.16, shall not exceed 0.044 percent for milkfat or protein, or
22 0.084 percent for total solids or solids-not-fat.

23 **Note:** The "Official Methods of Analysis of AOAC International," 18th edition (2005), is on file with the
24 division and the legislative reference bureau, and may be obtained from AOAC International, 2275 Research Blvd.,
25 Rockville, MD 20850, website <http://www.aoac.org>.

1 (d) *Calibration samples.* A set of calibration samples shall be obtained from a sample
2 provider approved by the division. A set of calibration samples shall consist of at least 12
3 individual samples, each of which complies with all of the following requirements:

4 1. Each sample shall be not more than 21 days old.

5 2. Each sample shall be a fresh milk sample preserved with bronopol (2-bromo-2-nitro-1,3-
6 propanediol) or another approved preservative. Preservative methods, formulations, and
7 concentrations shall be approved by the division.

8 3. Each sample shall have a known percentage content of each relevant milk component,
9 determined by the sample provider under subs. (5) to (8).

10 (3) DAILY PERFORMANCE CHECK. (a) *Requirement.* If an automated testing device is used to
11 test for milkfat, protein, total solids, or solids-not-fat in milk, and if the test results may affect the
12 price paid to a milk producer, the device shall be subjected to a daily performance check before
13 each day's testing. The daily performance check shall be conducted, for each relevant milk
14 component, by a tester who is licensed under s. 97.17 or 98.145, Stats., to operate the testing
15 device.

16 (b) *Procedure.* To conduct a daily performance check under par. (a), a tester shall test a set
17 of daily performance check samples under par. (d). Based on the daily performance check, the
18 tester shall do both of the following:

19 1. Determine the performance error of the testing device with respect to each daily
20 performance check sample. The performance error is the difference between the known
21 percentage content of each milk component in that sample, as determined by the sample
22 provider, and the percentage content as measured by the testing device.

2. Based on the performance errors for the individual samples under subd. 1., calculate the mean difference for the set of daily performance check samples. The mean difference is the sum of the performance errors for the individual samples, divided by the number of samples in the set.

(c) Calibration based on daily performance check. If, on a daily performance check under par. (a), the mean difference calculated under par. (b) 2. exceeds plus or minus 0.044% for milkfat or protein, or 0.084% for total solids or solids-not-fat, the testing device shall not be used until it is recalibrated under sub. (2).

(d) Daily performance check samples. A set of daily performance check samples shall be obtained from a sample provider approved by the division. A set shall consist of at least 5 individual samples, each of which complies with all of the following requirements:

1. Each sample shall be not more than 21 days old.

2. Each sample shall be a fresh milk sample preserved with bronopol (2-bromo-2-nitro-1,3-propanediol) or another approved preservative. Preservative methods, formulations, and concentrations shall be approved by the department.

3. Each sample shall have a known percentage content of each relevant milk component, determined by the sample provider under subs. (5) to (8).

(4) REFERENCE CHECKS. *(a) Requirement.* If an automated testing device is used to test for milkfat, protein, total solids, or solids-not-fat in milk, and if the test results may affect the price paid to a milk producer, that device shall be subjected to a daily reference check under par. (b) and hourly reference checks under par. (c).

(b) Daily reference check.

1 1. A daily reference check shall be conducted before each day's testing, at the same time that
2 the dairy plant operator conducts the daily performance check under sub. (3). The daily
3 reference check shall be conducted, for each relevant milk component, by a tester who is
4 licensed under s. 97.17 or 98.145, Stats., to operate the testing device.

5 2. To perform a daily reference check, a tester shall perform 10 tests on a reference sample.
6 The reference sample may be a homogenized milk sample prepared by the dairy plant operator,
7 or it may be a daily performance check sample obtained from a sample provider approved by the
8 department under sub. (3) (d). The 10 test results shall be averaged, and the average result shall
9 be used as a comparison value for the hourly reference checks under par. (c).

10 *(c) Hourly reference checks.*

11 1. An hourly reference check shall be conducted, for each milk component, before each
12 hour's testing for that component. To conduct an hourly reference check, a tester shall test the
13 same reference sample used for the daily reference check under par. (b).

14 2. For each relevant milk component, the hourly reference check result shall be compared to
15 the average result obtained on the daily reference check under par. (b). If an hourly reference
16 check result differs from the average result on the daily reference check by more than 0.034% for
17 milkfat or protein, or 0.064% for total solids or solids-not-fat, the testing device shall not be used
18 until the condition causing the difference is found and corrected. Test results obtained before the
19 device is corrected, and after the last previous conforming reference check, shall not be used in
20 determining the amount paid to milk producers.

21 **(5) CALIBRATION AND DAILY PERFORMANCE CHECK SAMPLES; MILKFAT CONTENTS.** (a) The
22 provider of a calibration sample under sub. (2) or a daily performance check sample under sub.
23 (3) shall determine the known percentage content of milkfat in that sample by averaging the

1 results of 3 milkfat tests using a method specified under par. (d). The results from those 3
2 milkfat tests shall not vary by more than 0.034%.

3 (b) The known milkfat content of a calibration sample, expressed as a percentage of the
4 sample weight, shall be at least 2.5%. Within a set of calibration samples, the difference in
5 known milkfat content between the lowest milkfat sample and the highest milkfat sample,
6 expressed as a percentage of average sample weight, shall be at least 2.5%.

7 (c) The known milkfat content of a daily performance check sample, expressed as a
8 percentage of the sample weight, shall be at least 2.8%. Within a set of daily performance check
9 samples, the difference in known milkfat content between the lowest milkfat sample and the
10 highest milkfat sample, expressed as a percentage of average sample weight, shall be at least
11 1.5%.

12 (d) To determine the milkfat content of a calibration sample or daily performance check
13 sample, the sample provider shall use either a manual or robotic version of the Modified
14 Mojonnier method as described in the "Official Methods of Analysis of AOAC International,"
15 18th edition (2005), section 989.05.

16 **Note:** The "Official Methods of Analysis of AOAC International," 18th edition (2005), is on file with the
17 division and the legislative reference bureau, and may be obtained from AOAC International, 2275 Research Blvd.,
18 Rockville, MD 20850, website <http://www.aoac.org>.
19

20 **(6) CALIBRATION AND DAILY PERFORMANCE CHECK SAMPLES; PROTEIN CONTENTS.** (a) The
21 provider of a calibration sample under sub. (2) or a daily performance check sample under sub.
22 (3) shall determine the known percentage content of protein in that sample by averaging the
23 results of 3 protein tests using the method specified under par. (c). The results from those 3
24 protein tests shall not vary by more than 0.034%.

25 (b) The known protein content of a calibration or daily performance check sample, expressed
26 as a percentage of sample weight, shall be at least 2.7%. Within a set of calibration samples, the

1 difference in known protein content between the lowest protein sample and the highest protein
2 sample, expressed as a percentage of average sample weight, shall be at least 0.7%. Within a set
3 of daily performance check samples, the difference in known protein content between the lowest
4 protein sample and the highest protein sample, expressed as a percentage of average sample
5 weight, shall be at least 0.5%.

6 (c) To determine the protein content of a calibration sample or daily performance check
7 sample, the sample provider shall use the traditional or block digester/steam distillation Kjeldahl
8 method as described in the "Official Methods of Analysis of AOAC International," 18th edition
9 (2005), section 991.20.

10 **Note:** The "Official Methods of Analysis of AOAC International," 18th edition (2005), is on file with the
11 division and the legislative reference bureau, and may be obtained from AOAC International, 2275 Research Blvd.,
12 Rockville, MD 20850, website <http://www.aoac.org>.
13

14 (7) CALIBRATION AND DAILY PERFORMANCE CHECK SAMPLES; TOTAL SOLIDS. (a) The
15 provider of a calibration sample under sub. (2) or a daily performance check sample under sub.
16 (3) shall determine the known percentage content of total solids in that sample by averaging the
17 results of 3 total solids tests using the method specified under par. (c). The results from those 3
18 total solids tests shall not vary by more than 0.054%.

19 (b) The known total solids content of a calibration or daily performance check sample,
20 expressed as a percentage of sample weight, shall be at least 11%. Within a set of calibration
21 samples, the difference in known total solids content between the lowest total solids sample and
22 the highest total solids sample, expressed as a percentage of average sample weight, shall be at
23 least 2.00%. Within a set of daily performance check samples, the difference in known total
24 solids content between the lowest total solids sample and the highest total solids sample,
25 expressed as a percentage of average sample weight, shall be at least 1.5%.

(c) To determine the total solids content of a calibration sample or daily performance check sample, the sample provider shall use the direct forced air oven drying method as described in the "Official Methods of Analysis of AOAC International," 18th edition (2005), section 990.20.

Note: The "Official Methods of Analysis of AOAC International," 18th edition (2005), is on file with the division and the legislative reference bureau, and may be obtained from AOAC International, 2275 Research Blvd., Rockville, MD 20850, website <http://www.aoac.org>.

(8) CALIBRATION AND DAILY PERFORMANCE CHECK SAMPLES; SOLIDS-NOT-FAT. The provider of a calibration sample under sub. (2) or a daily performance check sample under sub. (3) shall calculate the known percentage content of solids-not-fat in that sample by subtracting the percent milkfat as determined under sub. (5) from the total solids for that sample as determined under sub. (7). The calculation method shall be that described in the "Official Methods of Analysis of AOAC International," 18th edition (2005), section 990.21.

Note: The "Official Methods of Analysis of AOAC International," 18th edition (2005), is on file with the division and the legislative reference bureau, and may be obtained from AOAC International, 2275 Research Blvd., Rockville, MD 20850, website <http://www.aoac.org>.

(9) TESTING DEVICES; CONSTANT VOLTAGE. A constant voltage regulator shall be connected to, or form a part of, every milk component testing device that is in line with a single phase 115 or 220 volt power supply.

(10) RECORDS RELATED TO CALIBRATIONS, DAILY PERFORMANCE CHECKS, AND REFERENCE CHECKS. (a) A dairy plant operator shall keep a record of every calibration, performance check, or reference check conducted on a milk component testing device under this section.

(b) Every record required under par. (a) shall be signed by the licensed tester who made the record. Calibration records shall be kept separate from performance check and reference check records.

(11) ACCURACY OF DEVICES; DIVISION AUDIT. The division may audit the accuracy of milk component testing devices using test samples prepared by the division under subs. (5) to (8).

1 **ATCP 65.86 Milk quality test records and reports. (1) TEST RECORDS; GENERAL. (a)** A

2 person performing a milk quality test shall immediately record the test result and sign the test
3 record. The test record shall specify the date of the test, the identification number of the milk
4 producer, and the milk shipment from which the milk sample was collected.

5 (b) No test record may be altered except that errors, if any, may be corrected by marking a
6 single line through the original entry and inserting the correct entry immediately adjacent to the
7 original. A corrected entry shall be initialed by the person who made the corrected entry.

8 (c) The division may authorize a dairy plant to keep test records in electronic form if the
9 division finds that all of the following requirements are met:

10 1. The records are effectively secured against loss or tampering.

11 2. The records can be readily retrieved for inspection by the dairy plant operator and the
12 division.

13 3. The person who performs the test identifies himself or herself on the test record, by an
14 electronic method that is equivalent to a personal signature.

15 4. If an erroneous test record is corrected, the correction is identified so that the reader can
16 easily compare the corrected record to the original record.

17 **(2) RECORDS RETAINED BY DAIRY PLANT OPERATOR.** A dairy plant operator shall retain
18 records required under this section for the time period specified under s. ATCP 65.44, and shall
19 make the records available for inspection and copying by the division upon request.

20 **ATCP 65.88 False samples, test results or reports.** No person may do any of the
21 following, or conspire with another person to do any of the following:

22 **(1)** Falsely identify milk samples.

1 (2) Submit a false milk sample to the department, a dairy plant operator, or a testing
2 laboratory.

3 (3) Falsify any milk quality test or test result.

4 (4) Make any false or misleading record or report related to a milk quality test.

5 (5) Withhold any milk quality test report required under this chapter.

6 **Subchapter V — Inspection and Enforcement**
7

8 **ATCP 65.910 Inspection of dairy farms; general. (1) INSPECTION BY DAIRY PLANT.**

9 Before a dairy plant operator submits a milk producer license application or a grade A permit
10 application under s. ATCP 65.02 on behalf of a milk producer, the dairy plant operator shall
11 inspect the dairy farm. The dairy plant operator, when submitting the producer's license or
12 permit application, shall include a copy of the dairy plant operator's inspection report and shall
13 certify that the dairy farm facilities comply with applicable dairy farm standards under this
14 chapter. The department may, at other times, require a dairy plant operator to inspect a dairy
15 farm as necessary.

16 (2) INSPECTION BY THE DIVISION. The division shall inspect dairy farms for compliance with
17 applicable standards under this chapter. Except as provided in s. ATCP 65.912, the division
18 shall inspect a grade A dairy farm at least once every 6 months and a grade B dairy farm at least
19 once every year. For the purpose of conducting a lawful inspection under this chapter, the
20 department may exercise its authority under ss. 93.08, 93.15 (2), and 97.12 (1), Stats.

21 (3) VARIANCES. The division may issue a written waiver granting a variance from a dairy
22 farm standard under subch. II if the division determines that the variance is reasonable and
23 necessary under the circumstances, it will not compromise the purpose served by the standard,

1 and the milk producer does not hold a grade A farm permit. The division administrator, or the
2 administrator's designee, may issue a waiver under this subsection.

3 **ATCP 65.912 Performance-based grade A dairy farm inspections. (1) GENERAL.** The
4 division shall use the performance standards in this section to determine grade A dairy farm
5 inspection frequency. The division shall evaluate each grade A dairy farm every 3 months,
6 based on inspection reports, milk quality tests, and department compliance actions during the
7 preceding 12 months. Based on the evaluation, the division shall place each dairy farm in one of
8 the following categories:

9 **(2) TWELVE-MONTH INSPECTION INTERVAL.** The division shall inspect a grade A dairy farm
10 in this category at least once every 12 months. The division shall place a dairy farm in this
11 category if all the following apply, based on dairy farm inspection reports, milk quality tests, and
12 department compliance actions during the preceding 12 months:

13 (a) None of the producer's standard plate counts (SPC) exceed 25,000 per ml., except that
14 one SPC may exceed 25,000 per ml. if it is not more than 100,000 per ml.

15 (b) None of the producer's somatic cell counts (SCC) exceed 500,000 per ml.

16 (c) None of the milk shipped by the milk producer has been found to contain a drug residue,
17 and the department has not issued any warning to the milk producer under s. ATCP 65.923 (1) or
18 65.924 (1).

19 (d) No dairy farm inspection report shows more than 5 violations, a consecutive inspection
20 violation, or a violation which creates a substantial risk of adulteration or a violation which
21 creates an imminent health hazard.

22 (e) The department has not suspended the producer's grade A dairy farm permit or milk
23 producer license.

1 (f) The producer's latest water supply test does not show any violation of s. ATCP 65.10.

2 (g) The milk producer has not violated any milk temperature or cooling standards under this
3 chapter.

4 (3) SIX-MONTH INSPECTION INTERVAL. The division shall inspect a grade A dairy farm in this
5 category at least once every 6 months. The division shall place a dairy farm in this category if all
6 the following apply, based on dairy farm inspection reports, milk quality tests, and department
7 compliance actions during the preceding 12 months:

8 (a) The dairy farm fails to qualify under sub. (2).

9 (b) The department has issued no more than one warning to the milk producer under s. ATCP
10 65.922(1).

11 (c) None of the milk shipped by the milk producer has been found to contain a drug residue,
12 and the department has not issued any warning to the milk producer under ss. ATCP 65.923(1) or
13 65.924(1).

14 (d) No dairy farm inspection report shows more than 5 violations, a consecutive inspection
15 violation, or a violation which creates a substantial risk of adulteration or a violation which
16 creates an imminent health hazard.

17 (e) The department has not suspended the producer's grade A dairy farm permit or milk
18 producer license.

19 (f) The producer's latest water supply test does not show any violation of s. ATCP 65.10.

20 (g) The milk producer has not violated any milk temperature or cooling standards under this
21 chapter.

22 (4) FOUR-MONTH INSPECTION INTERVAL. The division shall inspect a grade A dairy farm in
23 this category at least once every 4 months. The division shall place a dairy farm in this category

1 if subs. (2), (3) and (5) do not apply, based on dairy farm inspection reports, milk quality tests,
2 and department compliance actions during the preceding 12 months; or at least one load of milk
3 shipped by the milk producer has been found to contain a drug residue, or at least one violation
4 for improper milk cooling (s. ATCP 65.18 (4)), drug use and storage (ss. ATCP 65.20 (5) and
5 65.22 (8)), or cleaning and sanitization of utensils and equipment (s. ATCP 65.12) was noted
6 during the most recent inspection. Once the division places a dairy farm in this category, the
7 division may not reassign the dairy farm to any inspection category under sub. (2) or (3) until a
8 date that is at least 12 months after the division's next 3-month evaluation of the dairy farm under
9 this section.

10 **(5) THREE-MONTH INSPECTION INTERVAL.** (a) The division shall inspect a grade A dairy farm
11 in this category at least once every 3 months. The division shall place a dairy farm in this
12 category if subs. (2) and (3) do not apply and if any of the following apply based on dairy farm
13 inspection reports, milk quality tests, or department compliance actions during the preceding 12
14 months:

- 15 1. The department issued more than one warning to the milk producer under s. ATCP 65.922.
- 16 2. The department issued more than one warning to the milk producer under s. ATCP 65.923.
- 17 3. The department issued more than one warning to the milk producer under s. ATCP 65.924.
- 18 4. The division conducted more than one reinspection of the dairy farm.
- 19 5. The department suspended the milk producer's license or grade A dairy farm permit.

20 (b) Once the division places a dairy farm in the 3-month inspection interval category under
21 par. (a), the division may not reassign the dairy farm to any inspection category under subs. (2)
22 to (4) until a date that is at least 12 months after the division's next 3-month evaluation of the
23 dairy farm under this section.

1 **ATCP 65.920 Suspension or revocation of milk producer license. (1) GENERAL.** The
2 department may suspend or revoke a milk producer's license for cause, as provided in s. 93.06
3 (7), Stats. The suspension or revocation of a milk producer's license also suspends or revokes
4 any grade A producer permit held by the milk producer. Except as provided under sub. (2), the
5 department may not suspend or revoke a milk producer's license except by order of the secretary
6 or the secretary's designee, after notice and opportunity for hearing under ch. 227, Stats. The
7 division may file a written complaint with the department, seeking the suspension or revocation
8 of a milk producer's license. Pending completion of the proceedings, the secretary or the
9 secretary's designee may issue interim orders as necessary to protect the public health, safety and
10 welfare.

11 **Note:** Cause for which a milk producer's license may be suspended or revoked may include violations of dairy
12 farm standards under subchapter II; violations of milk quality standards under s. ATCP 65.70; willful interference
13 with, or refusal to permit a lawful dairy farm inspection; or failure to pay a required fee under s. ATCP 65.02(19).
14

15 **(2) SUMMARY SUSPENSION BY THE DIVISION.** The division may issue a written notice
16 summarily suspending a milk producer's license if the division makes a written finding in its
17 suspension notice that any of the following circumstances exist and warrant summary
18 suspension:

19 (a) The sale or shipment of milk from the milk producer's dairy farm poses an imminent
20 hazard to public health, and there is a reasonable likelihood that the hazard may continue if the
21 milk producer's license is not summarily suspended.

22 **Note:** The following conditions, individually or in combination, may constitute evidence of an imminent public
23 health hazard under this paragraph:

24 1. An inspection of the milk producer's dairy farm reveals gross violations of dairy farm standards under
25 subchapter II, or reveals violations that pose an acute health risk.

26 2. Confirmed standard plate counts or plate loop counts on the milk producer's milk indicate bacterial counts of
27 more than 1,000,000 per ml. in the milk.

28 3. Drug tests on the milk producer's milk indicate that drug residues are present in the milk.

29 4. Milk from the milk producer's dairy farm is reliably believed to contain pesticides or toxic substances that
30 may be harmful to humans.

31 5. An infectious disease, transmissible to humans through milk, is reliably diagnosed in the milk producer's
32 herd.

1
2 (b) The milk producer has refused to permit inspection or sampling authorized by law.

3 (3) SUMMARY SUSPENSION NOTICE; RIGHT OF HEARING. A summary suspension notice under
4 sub. (2) becomes effective when served on the milk producer. A summary suspension notice
5 shall comply with s. ATPC 65.925. A person adversely affected by a summary suspension
6 notice may request a hearing on the summary suspension notice, as provided in s. ATPC 65.928.

7 (4) INSPECTION PRIOR TO REINSTATEMENT; REINSPECTION FEE. If an inspection is required for
8 reinstatement of a license which is suspended or revoked under this section, the department shall
9 charge a reinspection fee under s. ATPC 65.02 (19) for the inspection.

10 **ATPC 65.921 Suspension or revocation of grade A producer permit; general.** The
11 department may suspend or revoke a milk producer's grade A permit for cause, as provided in s.
12 93.06 (7), Stats. Except as provided under s. ATPC 65.920, 65.922, 65.923 or 65.924, the
13 department may not suspend or revoke a grade A producer permit except by order of the
14 secretary or the secretary's designee, after notice and opportunity for hearing under ch. 227,
15 Stats. The division may file a written complaint with the department, seeking the suspension or
16 revocation of a grade A producer permit. Pending completion of the proceedings, the secretary
17 or the secretary's designee may issue interim orders as necessary to protect the public health,
18 safety and welfare. If an inspection is required for the reinstatement of a grade A producer
19 permit that is suspended or revoked under this section, the department shall charge a reinspection
20 fee under s. ATPC 65.02 (19) for the inspection.

21 **Note:** Cause for which a milk producer's grade A producer permit may be suspended or revoked may include
22 violation of a dairy farm standard under subchapter II; violation of a milk quality standard under s. ATPC 65.70;
23 willful interference with, or refusal to permit, a lawful dairy farm inspection; or failure to pay fees for which the
24 producer is liable under s. ATPC 65.02 (19).
25

1 **ATCP 65.922 Violation of grade A milk quality standards; suspension of grade A**
2 **producer permit by the division. (1) WARNING NOTICE.** The division shall mail a written
3 warning notice to a grade A milk producer whenever any of the following occurs:

4 (a) Two of the last 4 bacterial counts reported to the division under s. ATCP 65.70 (2) (d)
5 exceed 100,000 per ml., in violation of the standard for grade A milk under s. ATCP 65.70 (2).

6 (b) Two of the last 4 somatic cell counts reported to the division under s. ATCP 65.70 (4) (e)
7 exceed 750,000 per ml. for cow or sheep milk, or 1,000,000 per ml. for goat milk, in violation of
8 the standard under s. ATCP 65.70 (4).

9 (c) Two of the last 4 milk temperature readings violate standards for grade A milk under s.
10 ATCP 65.70 (5).

11 **(2) CONTENTS OF WARNING NOTICE; EFFECTIVE PERIOD.** A warning notice under sub. (1)
12 shall warn the milk producer that the milk producer's grade A producer permit will be suspended
13 if milk quality testing indicates a continued violation of the standard under s. ATCP 65.70 to
14 which the warning notice pertains. A copy of the notice shall be mailed to the dairy plant
15 operator. A warning notice becomes effective 3 days after it is mailed, and remains in effect as
16 long as the standard cited in the warning notice is violated on 2 of the last 4 reported tests.

17 **(3) TESTING AFTER WARNING NOTICE.** Not less than 3 calendar days nor more than 21
18 calendar days after a warning notice under subs. (1) and (2) becomes effective, the dairy plant
19 operator shall obtain and test a sample of the milk producer's milk for compliance with the milk
20 quality standard cited under sub. (1). A milk sample collected under s. ATCP 65.38 and tested
21 by a dairy plant operator under subchapter V satisfies this requirement, provided that the sample
22 is obtained and tested within the time period specified under this paragraph, and the dairy plant

operator reports the test result to the division within the applicable reporting time specified under subchapter V.

(4) SUSPENSION NOTICE. The division shall mail a written notice to a milk producer, suspending the milk producer's grade A producer permit, if any of the following occurs while a warning notice under subs. (1) and (2) remains in effect:

(a) Three of the last 5 bacterial counts reported to the division under s. ATCP 65.70 (2) (d) and 65.922 (3) exceed 100,000 per ml.

(b) Three of the last 5 somatic cell counts reported to the division under s. ATCP 65.70 (4) (e) and 65.922 (3) exceed 750,000 per ml. for cow or sheep milk, or 1,000,000 per ml. for goat milk.

(c) Three of the last 5 milk temperature readings violate standards for Grade A milk under s. ATCP 65.70 (5)

Note: This subsection does not prohibit the department from summarily suspending a milk producer's license and grade A producer permit under s. ATCP 65.920, without prior warning, if the department determines that any of the circumstances identified under s. ATCP 65.920(2) exists.

(5) EFFECTIVE DATE OF SUSPENSION; CONTENTS OF SUSPENSION NOTICE. The suspension of a milk producer's grade A producer permit becomes effective 3 days after a suspension notice under sub. (4) is mailed. The department shall give prior oral or written notice of the suspension to the dairy plant operator, and shall mail or deliver a copy of the suspension notice to the dairy plant operator. The suspension notice shall comply with s. ATCP 65.925.

(6) REINSTATEMENT OF GRADE A PRODUCER PERMIT. (a) A milk producer may ask the department to reinstate a grade A producer permit suspended under sub. (4). The producer shall make the request in writing, on a form provided by the department under s. ATCP 65.925(4). The request shall include the result of a milk quality test, performed by the dairy plant operator

1 on a milk sample collected after the effective date of the suspension, showing that the milk
2 producer is no longer violating the relevant milk quality standard.

3 (b) Within 7 days after the department receives a complete reinstatement request that
4 complies with par. (a), the department shall do one of the following:

5 1. If the milk producer seeks reinstatement of a grade A producer permit suspended under
6 sub. (4) (a), the department shall inspect the dairy farm and charge a reinspection fee under s.
7 ATCP 65.02 (19). A division representative shall reinstate the grade A producer permit if the
8 division representative finds that the milk producer has corrected all the conditions potentially
9 responsible for the violations cited in the suspension notice. The division representative shall
10 notify the dairy plant operator of the reinstatement.

11 2. If the milk producer seeks reinstatement of a grade A producer permit suspended under
12 sub. (4) (b), the department shall reinstate the grade A producer permit. The department shall
13 notify the milk producer and the dairy plant operator of the reinstatement.

14 (c) If a milk producer does not request reinstatement under par. (a) within 6 months after the
15 producer's grade A producer permit is suspended under this section, the permit is automatically
16 revoked at the end of the 6 month period. Once revoked, the grade A producer permit may not
17 be reinstated except upon the filing of a new application under s. ATCP 65.02 (10). Written
18 notice to this effect shall be provided to the milk producer at the time of revocation. This
19 paragraph does not apply if the suspension of the milk producer's grade A producer permit has
20 been contested, and the contested case proceedings are still pending.

21 **ATCP 65.923 Drug residue violations; milk producer sanctions. (1) WARNING NOTICE.**

22 (a) *Requirement.* Whenever the division receives notice under s. ATCP 65.72 (9) that a milk
23 producer milk sample has tested positive for a drug residue, the division shall mail a warning

notice to that milk producer. The warning notice takes effect 3 days after it is mailed. The warning notice shall include all of the following:

1. A description of the positive drug residue findings which caused the division to issue the notice.

2. The warnings specified in pars. (b) and (c).

3. Notice of the milk producer's right to hearing under par. (d).

4. Notice that the division or its agent will conduct an investigation under sub. (4).

(b) Grade A producer permit suspension; 21-day notice. The warning notice under par. (a) shall state that, 21 days after the effective date of the warning notice, the department will suspend the milk producer's grade A producer permit unless, prior to that date, the milk producer certifies to the division that the milk producer has implemented a drug residue prevention program on the milk producer's dairy farm in consultation with a licensed veterinarian.

(c) Milk producer license suspension; 45-day notice. The warning notice under par. (a) shall state that, 45 days after the effective date of the warning notice, the department will initiate action to suspend the milk producer's license unless, prior to that date, the milk producer certifies to the division that the milk producer has implemented a drug residue prevention program on the milk producer's dairy farm in consultation with a licensed veterinarian.

Note: The drug residue prevention program under this section should conform to the "Milk and Dairy Beef Quality Assurance Program" published by Agri-Education, Inc. A copy of that manual is on file with the division and the legislative reference bureau and may be obtained from the Milk & Dairy Beef Quality Assurance Center, 801 Shakespeare Avenue, Stratford, Iowa, 50249, telephone 800-553-2479, website www.dqacenter.org/catalog.htm.

(d) Right to informal hearing. If a milk producer receiving a warning notice under par. (a) disputes the drug residue findings on which the notice is based, the milk producer may request an informal hearing to discuss the drug residue findings. A request for hearing does not automatically stay the warning notice. If the milk producer requests an informal hearing, the

1 division shall hold an informal hearing at the division's office or by telephone. The division shall
2 hold the informal hearing within 10 business days after the division receives the request for
3 hearing, unless the milk producer agrees to a later hearing date. The division may withdraw a
4 warning notice if it appears that the notice was not justified.

5 (2) GRADE A PRODUCER PERMIT SUSPENSION. (a) *Notice suspending permit.* If the division
6 does not receive a milk producer certification within the 21-day period specified under sub. (1)
7 (b), the department shall mail a notice to the milk producer suspending the milk producer's grade
8 A producer permit. The suspension notice shall comply with s. ATCP 65.921. The suspension
9 notice takes effect 3 days after it is mailed. The division shall notify the dairy plant operator
10 who procures milk from the milk producer of the suspension, and shall provide that dairy plant
11 operator with a copy of the suspension notice.

12 (b) *Permit reinstatement.* 1. If the department suspends a milk producer's grade A producer
13 permit under par. (a), the milk producer may ask the department to reinstate the permit. The
14 milk producer shall file the reinstatement request in writing, on a form provided by the
15 department under s. ATCP 65.925(4). The request shall certify that the milk producer has
16 implemented a drug residue prevention program on the producer's dairy farm in consultation
17 with a licensed veterinarian.

18 2. Within 7 days after the department receives a complete reinstatement request under subd.
19 1., the division shall inspect the milk producer's dairy farm. The department shall charge a
20 reinspection fee for the inspection, pursuant to s. ATCP 65.02 (19). If, upon inspection, it
21 appears that all conditions potentially responsible for the positive drug residue finding have been
22 corrected, the division representative shall reinstate the milk producer's grade A producer permit,
23 and shall notify the dairy plant operator of the reinstatement.

1 3. If a milk producer does not request reinstatement under subd. 1. within 6 months after the
2 milk producer's grade A producer permit is suspended under par. (a), the permit is revoked
3 automatically at the end of the 6 month period. A permit, once revoked, may not be reinstated
4 unless the milk producer files a new application under s. ATCP 65.02(11). Written notice to this
5 effect shall be included in the suspension notice under par. (a), and shall also be provided to the
6 milk producer at the time of revocation. This subdivision does not apply if the milk producer's
7 grade A producer permit suspension has been contested and the contested case proceeding is
8 pending.

9 (3) LICENSE SUSPENSION. (a) *License suspension; failure to implement drug residue*
10 *prevention program.* If the division does not receive a milk producer certification within the 45-
11 day period specified under sub. (1) (c), the division shall file a complaint asking the department
12 to suspend the milk producer's license until the milk producer implements a drug residue
13 prevention program.

14 (b) *License suspension; 2 violations within 12 months.* If, within any 12 month period, the
15 division receives 2 notices under s. ATCP 65.72(9) that milk samples from the same milk
16 producer have tested positive for drug residues, the division shall file a complaint asking the
17 department to suspend the milk producer's license for at least 10 days and require that the milk
18 producer attend and present a certificate of completion for a drug residue prevention program
19 approved by the department within 180 days of the first day of the license suspension. If the
20 certificate of completion is not presented to the division, then the division shall file a complaint
21 asking the department to suspend the milk producer's license until the certificate of completion is
22 presented. The certificate of course completion shall be signed by the milk producer, a licensed

1 veterinarian, and the field representative of the dairy plant to which the milk producer's milk is
2 shipped.

3 (c) *License suspension; 3 violations within 12 months.* If, within any 12 month period, the
4 division receives 3 notices under s. ATCP 65.72 (9) that milk samples from the same milk
5 producer have tested positive for drug residues, the division shall file a complaint asking the
6 department to suspend the milk producer's license for at least 30 days.

7 (d) *License suspension; repeat tissue residue violations.* If the division receives notice that a
8 milk producer has been reported on the US department of agriculture repeat residue violators list,
9 for twice within a 12 month period presenting for slaughter dairy cattle with one or more tissues
10 testing positive for a drug residue, the division shall file a complaint asking the department to
11 suspend the milk producer's license for at least 10 days and require that the milk producer attend
12 and present a certificate of completion for a drug residue prevention program approved by the
13 department within 180 days of the first day of the license suspension. If the certificate of
14 completion is not presented to the division, then the division shall file a complaint asking the
15 department to suspend the milk producer's license until the certificate of completion is presented.
16 The certificate of course completion shall be signed by the milk producer, a licensed
17 veterinarian, and the field representative of the dairy plant to which the milk producer's milk is
18 shipped.

19 **Note:** The milk producer sanctions under this section are in addition to any other sanctions provided under this
20 chapter or ch. 93 or 97, Stats., and do not limit the application of those other sanctions.

21
22 **Note:** A drug residue prevention program that is department approved is the "What Matters" course offered by
23 the Wisconsin Veterinary Medicine Association.
24

25 (4) **INVESTIGATION.** After the department issues a warning notice under sub. (1), the division
26 or its agent shall conduct an investigation to determine the cause of the drug residue violation,
27 and to identify milk producer actions that may be necessary to prevent future violations. The

1 division may direct the dairy plant operator who procures milk from the milk producer to
2 conduct the investigation as the division's agent and report its findings to the division, in writing.

3 **ATCP 65.924 Violation of grade A dairy farm standards; suspension of grade A**

4 **producer permit by division. (1) WARNING NOTICE.** If a division representative finds a key

5 violation during an inspection, including one or more identical violations, during two

6 consecutive inspections on a grade A dairy farm, the division representative shall issue a warning

7 notice to the milk producer. The warning notice shall state that the department will suspend the

8 milk producer's grade A producer permit if the producer does not correct the violation by a

9 deadline date specified in the notice. The division representative shall specify a correction

10 deadline based on the seriousness of the key violation and the time reasonably required to correct

11 the key violation. The correction deadline shall be not less than 3 days nor more than 65 days

12 after the division representative issues the warning notice. The division representative shall

13 serve the warning notice in person or by mail, or shall prominently post the notice in the

14 milkhouse. The division representative shall mail or deliver a copy of the warning notice to the

15 dairy plant operator who procures milk from the milk producer. The warning notice shall

16 include a notice of the milk producer's right to hearing under s. ATCP 65.928.

17 **(2) REINSPECTION; SUSPENSION NOTICE.** Within 7 days after the correction deadline date

18 specified in a warning notice under sub. (1), a division representative shall reinspect the dairy

19 farm to determine whether the milk producer has corrected each key violation cited in the

20 warning notice. The department shall charge a reinspection fee for the inspection, pursuant to s.

21 ATCP 65.02 (19). If the division representative finds that the milk producer has not corrected a

22 key violation cited in the warning notice, the division representative shall issue a written notice

23 suspending the milk producer's grade A producer permit. The suspension takes effect when the

1 division representative serves the notice on the milk producer, according to s. ATPCP 65.925(6).
2 The division representative shall promptly notify the dairy plant operator, and place a tag
3 indicating that the milk is now to be handled as grade B milk, on the outlet valve of the bulk tank
4 to notify the bulk milk weigher and sampler of the suspension. The division representative shall
5 mail or deliver a copy of the suspension notice to the dairy plant operator who procures milk
6 from the milk producer. A person adversely affected by the suspension notice may request a
7 hearing on the notice as provided under s. ATPCP 65.928.

8 (3) REINSTATEMENT OF PERMIT. (a) A milk producer whose grade A producer permit is
9 suspended under sub. (2) may file a written request for reinstatement with the department. The
10 reinstatement request shall be made on a form provided by the department under s. ATPCP
11 65.925(4). Within 7 days after the department receives the reinstatement request, the division
12 shall inspect the milk producer's dairy farm in response to the reinstatement request. The
13 department shall charge a reinspection fee for the inspection, pursuant to s. ATPCP 65.02 (19). If,
14 upon inspection, it appears that all violations cited in the suspension notice have been corrected,
15 the division representative shall reinstate the milk producer's grade A producer permit, and shall
16 notify the dairy plant operator who procures milk from the milk producer of the reinstatement.

17 (b) If a milk producer does not request reinstatement under par. (a) within 6 months after a
18 milk producer's grade A producer permit is suspended under sub. (2), the grade A producer
19 permit is automatically revoked at the end of the 6 month period. Once revoked, the permit may
20 not be reinstated except upon the filing of a new application under s. ATPCP 65.02 (11). Written
21 notice to this effect shall be provided to the milk producer at the time of revocation. This
22 paragraph does not apply if the suspension of the milk producer's grade A producer permit has
23 been contested, and the contested case proceedings are still pending.

1 **Note:** Subsection (3) does not prohibit the division from summarily suspending a milk producer's license and
2 grade A producer permit under s. ATPC 65.920 without prior warning if the division determines that any of the
3 circumstances identified under s. ATPC 65.920 (2) exist.
4

5 **ATCP 65.925 Suspension notice; requirements.** Whenever the division suspends a milk
6 producer license under s. ATPC 65.920(2), or a grade A producer permit under s. ATPC 65.922
7 (4) or 65.924 (2), the suspension notice shall comply with the following requirements:

8 **(1) ISSUED BY AUTHORIZED PERSON.** A suspension notice shall be issued by one of the
9 following:

10 (a) The division administrator.

11 (b) A person that the division administrator designates in writing, by name or position.

12 (c) A division representative if the suspension notice is issued under s. ATPC 65.924 (2).

13 **(2) REASON FOR SUSPENSION.** A suspension notice shall specify the reasons for which the
14 suspension notice is issued.

15 **(3) TERM OF SUSPENSION; REINSTATEMENT REQUIREMENT.** A suspension notice shall indicate
16 the term of the suspension or, if the suspension is for an indefinite term, the conditions that the
17 milk producer must meet in order to obtain reinstatement of the license or grade A producer
18 permit. Conditions for reinstatement shall be reasonably related to the reasons for which the
19 license or permit is suspended. A summary license suspension notice under s. ATPC 65.920 (2),
20 may authorize a dairy plant operator to receive milk from the suspended milk producer on a
21 conditional basis, pending full reinstatement of the milk producer's license, provided that the
22 dairy plant operator performs specified inspections or tests.

23 **(4) REINSTATEMENT APPLICATION FORM.** A notice suspending a grade A producer permit
24 under ss. ATPC 65.922 (4) or 65.924 (2) shall be accompanied by a reinstatement application
25 form which may be used by the affected milk producer to apply for reinstatement of the milk
26 producer's grade A producer permit. The form shall include a statement, to be signed by the

1 affected milk producer, that all requirements for the reinstatement of the grade A producer
2 permit have been met to the best of the milk producer's knowledge. If a milk producer requests a
3 hearing on a suspension under s. ATCP 65.928, a request for reinstatement under this subsection
4 does not constitute an admission or waiver by the milk producer with respect to any fact, issue or
5 cause of action.

6 (5) NOTICE OF RIGHT TO HEARING. A suspension notice shall include a notice that the milk
7 producer may request a hearing on the suspension, as provided under s. ATCP 65.928.

8 (6) SERVICE ON MILK PRODUCER. A suspension notice shall be served on the affected milk
9 producer by one of the following methods:

10 (a) By delivering the notice in person to the milk producer, or to a competent member of the
11 milk producer's family who is 14 years of age or older.

12 (b) By mailing the notice to the milk producer. Service may be proved by an affidavit of
13 mailing, or by a return receipt signed by the milk producer. Absent proof of later delivery, a
14 notice served by mail is considered served 3 days after the date of mailing.

15 (c) For a notice suspending a grade A producer permit under s. ATCP 65.924, by posting the
16 suspension notice in a prominent location in the milk producer's milkhouse. A notice posted in
17 the milkhouse under this paragraph is considered served at the time of posting.

18 (7) COPY PROVIDED TO DAIRY PLANT OPERATOR. A copy of every suspension notice shall be
19 mailed or delivered to the dairy plant operator who normally procures milk from the milk
20 producer. Failure to mail or deliver a copy to the dairy plant operator does not invalidate a
21 suspension notice.

1 **ATCP 65.926 Dairy plant license and grade A permit suspension or revocation. (1)**

2 The department may suspend or revoke a dairy plant license or grade A dairy plant permit for
3 cause, as provided under s. 93.06 (7), Stats. Cause may include, but is not limited to:

4 (a) A violation of this chapter or ch. ATCP 100.

5 (b) Interference with lawful inspection or sampling by the department or certifying agency,
6 or refusal to permit lawful inspection or sampling by the department or certifying agency.

7 (c) Refusal to permit the lawful inspection or copying of documents under s. 65.44 (2).

8 (d) Failure to pay fees required under s. ATCP 65.04.

9 **Note:** The procedure for suspending or revoking a dairy plant license or grade A permit is specified in ch.
10 ATCP 1.

11
12 **(2)** The suspension or revocation of a dairy plant license automatically suspends or revokes
13 any grade A permit which the dairy plant operator holds for that dairy plant.

14 **Note:** Violations of this chapter may also result in court prosecution under s. 97.72 or 97.73,
15 Stats.

16 **ATCP 65.927 Holding orders; identification and disposal of adulterated milk. (1)**

17 HOLDING ORDER. Whenever a division representative has reasonable cause to believe that milk
18 or a milk product examined by the division representative is adulterated or misbranded, and is
19 dangerous to health or misleading to the injury or damage of a purchaser or consumer, the
20 division representative may issue a temporary holding order to allow for further testing or
21 examination of the milk or milk product, pursuant to s. 97.12 (2), Stats. A holding order shall be
22 in writing, and shall identify the milk or milk product that is subject to the holding order. The
23 division may extend or terminate a holding order by written notice, as provided in s. 97.12 (2),
24 Stats. A notice extending a holding order shall be signed by the division administrator, or a
25 person authorized in writing by the division administrator. A holding order and every notice

1 extending a holding order shall include a notice of the recipient's right to hearing under s. ATCP
2 65.928.

3 (2) DISPOSAL ORDER. If analysis or examination shows that milk or a milk product is
4 adulterated or misbranded, and is dangerous to health or misleading to the injury or damage of a
5 purchaser or consumer, the division may issue a summary disposal order under s. 97.12 (2) (c),
6 Stats., requiring the disposal or other disposition of the milk or milk product. A disposal order
7 may be issued by the division representative who examines the milk, or by the division
8 administrator, or by a person whom the administrator designates in writing. Where appropriate,
9 an order may require relabeling of misbranded milk in lieu of disposal. A holding order under
10 sub. (1) is not a prerequisite to a disposal order under this subsection. A disposal order shall be
11 issued in writing, and shall include a notice of the recipient's right to hearing under s. ATCP
12 65.928.

13 (3) IDENTIFICATION OF ADULTERATED MILK. If milk is found to be adulterated and hazardous
14 to health, a division representative may identify the milk for disposal or disposition in
15 compliance with a notice under sub. (2). To identify the adulterated milk, the division
16 representative may tag the milk container, and may add a harmless food grade color to the milk
17 to prevent its sale or use for human food purposes.

18 **ATCP 65.928 Right of hearing. (1) HEARING REQUEST.** A person adversely affected by
19 any of the following division actions may ask the department to hold a hearing on that action:

20 (a) The denial of a milk producer license application or grade A producer permit application
21 under s. ATCP 65.02.

22 (b) The summary suspension of a milk producer license under s. ATCP 65.920 (2).

23 (c) The issuance of a warning notice under s. ATCP 65.922(1) or 65.924(1)

1 (d) The suspension of a grade A producer permit under s. ATCP 65.922(4) or 65.924(2).

2 (e) The denial of a reinstatement application under s. ATCP 65.922(6) or 65.924(3).

3 (f) A holding order, disposal order, or other summary action under s. ATCP 65.927.

4 (g) The suspension or revocation of a dairy plant license or grade A permit under s. ATCP
5 65.926.

6 (2) FORM AND TIMING OF REQUEST; EFFECT PENDING HEARINGS. A person requesting a
7 hearing under sub. (1) shall make that request, in writing, within 10 days after the milk producer
8 receives notice of the division action. A request for hearing does not stay the effect of any action
9 under this chapter. The filing deadline under this subsection is waived if the department fails to
10 give the milk producer timely written notice of the filing deadline.

11 (3) INFORMAL HEARING. (a) Whenever the department receives a hearing request under sub.
12 (2), the department shall conduct a prompt informal hearing on the contested action. The hearing
13 shall be conducted by a presiding officer who is a department employee or official who was not
14 personally involved in the investigation or decision to take the contested action, and who has
15 authority to withdraw or correct the action as necessary. The division shall conduct the informal
16 hearing unless the contested action was taken by the division administrator. The division shall
17 hold the informal hearing within 20 business days after it receives the hearing request under sub.
18 (2), unless the person requesting the hearing agrees to a later date. The division may hold the
19 informal hearing by telephone or at the division's office.

20 (b) The issue for hearing, held under par. (a), shall be limited to whether the division had
21 adequate grounds for the contested action. Within 2 business days after the conclusion of the
22 informal hearing, the presiding officer shall issue a brief written memorandum that summarizes
23 the informal hearing, and any decision or action resulting from the informal hearing. A copy of

the memorandum shall be provided to the person who requested the hearing. The memorandum shall include notice of the person's right to request a full evidentiary hearing under sub. (4).

(4) FULL EVIDENTIARY HEARING. If a person adversely affected by a division action files a timely written request for hearing under subs. (1) and (2), and if the matter is not resolved by an informal hearing under sub. (3), the person may request a full evidentiary hearing before the department, pursuant to ch. 227, Stats., and ch. ATCP 1. The person shall make the hearing request within 10 days after the officer presiding at the informal hearing issues the written memorandum under sub. (3) (b) summarizing that informal hearing. A full evidentiary hearing, if any, shall be held before an administrative law judge appointed by the secretary. A request for a full evidentiary hearing does not stay any action under this chapter.

ATCP 65.930 Grade A dairy plants; compliance monitoring and inspection. (1)

AUDIT SURVEYS BY CERTIFYING AGENCY. (a) *Requirement.* The division shall perform audit surveys of grade A dairy plants, and the dairy farms shipping milk to those dairy plants, to establish a grade A sanitation compliance rating under this chapter. The division shall survey a grade A dairy plant, and the farms shipping milk to that dairy plant, at all of the following times:

1. Within 20 business days after the department first issues a grade A dairy plant permit to the dairy plant under s. 65.04.

2. At least once every 2 years after the initial survey under subd. 1.

(b) *Survey method.* A survey under par. (a) shall include an inspection of the grade A dairy plant, an inspection of a randomly selected statistically representative sample of dairy farms shipping grade A milk to that dairy plant, and an evaluation of enforcement methods. A survey shall be conducted in compliance with "Methods of Making Sanitation Ratings of Milk

Supplies," 2013 revision, published by the Food and Drug Administration, Public Health Service, United States Department of Health and Human Services.

(c) *Survey rating.* Based on a survey under par. (a), the division shall assign an overall grade A sanitation compliance rating to the dairy plant and the dairy farms that ship milk to that dairy plant.

Note: The "Methods of Making Sanitation Ratings of Milk Supplies" is on file with the division and the legislative reference bureau. Copies may be purchased from the Milk Safety Team, HFS-626, Food and Drug Administration, Public Health Service, United States Department of Health and Human Services, 5100 Paint Branch Parkway, College Park, MD 20740-3835. Also available online at <http://www.fda.gov/food/guidanceregulation/federalstatefoodprograms/ucm2007965.htm>.

(d) *Unsatisfactory survey rating; grade A permit suspension.* The department may suspend or revoke a dairy plant's grade A permit if the sanitation compliance rating for that dairy plant under par. (c) falls below 80%. This subsection does not prohibit the department from suspending or revoking a grade A dairy plant permit for any other reason.

Note: Procedures related to the suspension or revocation of a grade A dairy plant permit are set forth in ch. ATCP 1. If a compliance rating falls below 80%, the department may also decertify the dairy plant as an interstate milk shipper. Decertification may prevent the dairy plant operator from shipping grade A dairy products in interstate commerce.

(2) **INSPECTION FREQUENCY.** (a) Except as provided in par. (b), the division shall inspect every grade A processing plant at least once every 3 months, every grade A receiving station at least once every 3 months, and every grade A transfer station at least once every 6 months.

(b) Paragraph (a) does not apply to a grade A processing plant, receiving station, or transfer station that the United States food and drug administration lists as being enrolled in the program described in PMO Appendix K.

Note: PMO Appendix K describes a voluntary "hazard analysis-critical control point (HACCP)" program for dairy plants. The HACCP program serves as a partial alternative to traditional inspection. If a dairy plant is currently enrolled in the HACCP program, as indicated by the Interstate Milk Shippers List published by the United States food and drug administration, the department is not required to inspect the dairy plant with the normal frequency required under sub. (2)(a). If an enrolled dairy plant fails to comply with HACCP program standards in PMO Appendix H, the food and drug administration may "de-list" the dairy plant from the HACCP program and the department must then inspect the dairy plant at the normal frequency required by sub. (2)(a). PMO Appendix K is on

1 file with the division and the legislative reference bureau. Copies may be obtained from the department at cost or
2 online at <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk>.
3

4 (3) DAIRY PRODUCT SAMPLING; FREQUENCY. (a) *Pasteurized milk and dairy products;*
5 *sample testing.* Except as provided in par. (c), the division in every consecutive 6 month period
6 shall collect from every grade A dairy plant at least 4 samples of each pasteurized grade A dairy
7 product produced by that dairy plant. The division shall collect each sample in a separate month,
8 except that the division may collect 2 of the samples in the same month if it collects those 2
9 samples at least 20 days apart and collects the other two samples in two other months. Dairy
10 plants producing pasteurized grade A dairy products on an intermittent basis shall notify the
11 division of intended production schedules to facilitate sample collection under this paragraph.
12 The division shall measure and record the temperature of each pasteurized grade A dairy product
13 from which the samples are collected, and shall test the samples for bacteria counts, coliform
14 counts, and beta lactam drug residues. The division may collect additional samples and perform
15 additional tests which the division considers necessary.

16 (b) *Raw milk held at dairy plant; sample testing.* During every consecutive 6-month period,
17 the division shall collect at least 4 samples of commingled raw milk from each grade A dairy
18 plant that receives raw milk. The division shall collect each sample in a separate month, except
19 that the division may collect 2 of the samples in the same month if it collects those 2 samples at
20 least 20 days apart and collects the other two samples in two other months. The division shall
21 measure and record the temperature of the raw commingled milk from which the division
22 collects each sample, and shall test each sample for bacterial counts and beta lactam drug
23 residues. The division may collect additional samples and perform additional tests which the
24 division considers necessary.

(c) Paragraph (a) does not apply to a grade A condensed or dry milk product that is not produced on a continuous monthly basis, provided that the division collects at least 5 samples within each continuous production period.

SECTION 3. ATCP 65 Appendix is created to read:

Chapter ATCP 65

APPENDIX A

3-A SANITARY STANDARDS AND ACCEPTED PRACTICES

The following 3-A standards and 3-A accepted practices establish criteria for the sanitary construction and operation of dairy handling and processing equipment. These standards are published by the "3-A Sanitary Standards, Inc., 1451 Dolley Madison Boulevard, Suite 210, McLean, VA 22101-3850, website www.3-A.org, Telephone: (703) 790-0295, Fax: (703) 761-6284. Copies are on file with the department and the revisor of statutes. Copies may be obtained from "3-A Sanitary Standards, Inc. Online Store" at <http://www.techstreet.com>.

You may also search, order and download standards (in PDF format) by visiting <http://www.3-A.org>.

3-A SANITARY STANDARDS

Doc. No.	Title (3-A Sanitary Standards for:)	Effective
00-00	General Requirements	10/2014
01-09	Insulated Tanks	11/2013
02-11	Centrifugal and Positive Rotary Pumps	7/2012
04-05	Homogenizers and Reciprocating Pumps	6/2012
05-15	Stainless Steel Automotive Transportation Tanks	11/2002
10-04	Filters Using Single Service Filter Media	11/2000
11-09	Plate-Type Heat Exchangers	8/2010
12-07	Tubular Heat Exchangers	11/2003
13-11	Farm Milk Cooling and Holding Tanks	7/2012
16-05	Product Evaporators and Vacuum Pans	8/1997
17-11	Formers, Fillers, and Sealers of Containers for Fluid Products	11/2012
18-03	Multiple-Use Rubber and Rubber-Like Materials	8/1999
19-07	Batch and Continuous Freezers Ice Cream, Ices, and Similarly Frozen Foods	12/2008
20-27	Multiple-Use Plastic Materials	7/2011
21-01	Centrifugal Separators and Clarifiers	11/2006
22-08	Silo-Type Storage Tanks	11/2004
23-06	Equipment for Packaging Viscous Products	11/2012

Doc. No.	Title (3-A Sanitary Standards for:)	Effective
24-03	Non-Coil Type Batch Pasteurizers	7/2010
25-03	Non-Coil Type Batch Processors	11/2002
26-05	Sifters for Dry Products	4/2007
27-06	Equipment for Packaging Dry Products	5/2010
28-04	Flow Meters	1/2009
29-03	Air Eliminators	8/2011
30-01	Farm Milk Storage Tanks	9/1984
31-06	Scraped Surface Heat Exchangers	9/2010
32-03	Uninsulated Tanks	3/2013
33-02	Metal Tubing	9/2009
34-02	Portable Bins for Dry Products	9/1992
35-04	Blending Equipment	8/2011
36-01	Inline Rotor-Stator Mixers	11/2003
38-00	Cottage Cheese Vats	8/1997
39-01	Pneumatic Conveyors for Dry Products	11/2003
40-04	Bag Collectors	3/2012
41-03	Mechanical Conveyors for Dry Products	1/2008
42-01	In-Line Strainers	11/1997
44-03	Diaphragm Pumps	11/2001
45-02	Crossflow Membrane Modules	11/2003
46-03	Refractometers and Energy-Absorbing Optical Sensors	11/2002
49-01	Air Driven Sonic Horns for Dry Products	11/2001
50-01	Level Sensing Devices for Dry Products	11/2001
51-01	Plug-Type Valves	11/1998
52-02	Plastic Plug-Type Valves	11/1998
53-06	Compression-Type Valves	5/2009
54-02	Diaphragm-Type Valves	11/1997
55-02	Boot Seal Type Valves	8/2010
56-00	Inlet and Outlet Leak-Protector Plug-Type Valves	5/1993
57-02	Disc-Type Valves	5/2008
58-01	Vacuum Breakers and Check Valves	8/2010
59-00	Automatic Positive Displacement Samplers for Fluid Products	11/1993
60-01	Rupture Discs	7/2013

Doc. No.	Title (3-A Sanitary Standards for:)	Effective
61-01	Steam Injection Heaters	9/2006
62-02	Hose Assemblies	11/2010
63-03	Sanitary Fittings	11/2002
64-00	Pressure Reducing and Back Pressure Regulating Valves	11/1993
65-01	Sight and/or Light Windows and Sight Indicators in Contact with Product	6/2008
68-00	Ball-Type Valves	11/1996
70-02	Italian-Type Pasta Filata Style Cheese Cookers	7/2013
71-01	Italian-Type Pasta Filata Style Cheese Moulders	11/2002
72-01	Italian-Type Pasta Filata Style Moulded Cheese Chillers	11/2002
73-01	Shear Mixers, Mixers, and Agitators	10/2005
74-06	Sensors and Sensor Fittings and Connections Used on Equipment	8/2013
75-01	Belt-Type Feeders	6/2012
78-01	Spray Cleaning Devices Intended to Remain in Place	11/2003
81-00	Auger-Type Feeders	11/1998
82-00	Pulsation Dampening Devices	11/2002
83-00	Enclosed Cheese Vats and Tables	11/2003
84-02	Personnel Access Ports for Wet Applications	6/2007
85-03	Double-Seat Mixproof Valves	4/2014
87-00	Mechanical Strainers	11/2007
88-00	Machine Leveling Feet and Supports	12/2006
95-00	Transportation Tank Vents	10/2012
101-00	Pipeline Product Recovery Equipment Using Projectiles	8/2012

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3-A ACCEPTED PRACTICES

Doc. No.	Title (3-A Sanitary Standards Topic)	Effective
603-07	Sanitary Construction, Installation, Testing, and Operation of High-Temperature Short-Time and Higher-Heat Shorter-Time Pasteurizer Systems	11/2005
604-05	Supplying Air Under Pressure for Contact with Product or Product Contact Surfaces	11/2004
605-04	Permanently Installed Product and Solution Pipelines and Cleaning Systems	8/1994
606-05	Design, Fabrication, and Installation of Milking and Milk Handling Equipment	11/2002

607-05	Spray Drying Systems	11/2004
608-02	Instantizing Systems	11/2001
609-03	Method of Producing Steam of Culinary Quality	11/2004
610-02	Sanitary Construction, Installation, and Cleaning of Crossflow Membrane Processing Systems	7/2009
611-00	Farm Milk Cooling and Storage Systems	11/1994
612-00	Plant Environmental Air Quality	12/2011

1 **SECTION 4.** ATCP 80 is repealed.

2 **SECTION 5. EFFECTIVE DATE:** This rule shall take effect on the first day of the month
3 following publication in the Wisconsin administrative register, as provided under s. 227.22 (2)
4 (intro).

Dated this _____ day of _____, 2015.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: Milk and Milk Products
Adm. Code Reference: ATPC 65
Rules Clearinghouse #: Not assigned
DATCP Docket #: 13-R-06 and 13-R-13

Rule Summary

The department proposes a comprehensive revision to food safety rules ATPC 60, "Dairy Farms," and ATPC 80, "Dairy Plants." The objective of this proposed rule is to modernize current dairy farm and dairy plant inspection rules to ensure compliance with the federal Food and Drug Administration's (FDA) Pasteurized Milk Ordinance (PMO), accommodate advances in dairying and manufacturing dairy products, and continue ensuring the safety and quality of Wisconsin milk and milk products. FDA revises the PMO every two years and the department must periodically revise its dairy farm and dairy plant rules to ensure compliance with the PMO. States must meet PMO requirements in order for their grade "A" milk and milk products to be shipped in interstate commerce.

Consolidation of dairy farm and dairy plant rules into one rule

This rule revision consolidates ATPC 60 and 80 into a newly created ATPC 65, "Milk and Milk Products," recognizes the growing integration between Wisconsin dairy farms and dairy plants, where dairy plants are sometimes located directly on a dairy farm; and creates a more user-friendly "one-stop" rule for the dairy industry.

Revisions in general terminology and definitions

Wording was changed throughout to provide greater clarity and modernize terms. For example, references to "milk haulers" now refer to "bulk milk weigher and samplers", using the actual name of the license held by people who collect, sample, and transport milk. References to "inspectors" now refer to "division representative" to reflect the broader range of staff, e.g. sanitarians, food scientists, regulatory specialists who may conduct inspections. Definitions were also updated and revised, as necessary, to modernize terminology.

Clarification of licensing and fees

The rule clarifies that a license is required for each milk producer and each species of milk animal milked by a single producer. The rule clarifies that no more than one milk producer may have a grade "A" dairy farm unless all of the milk shipped from that dairy farm is assigned to one bulk tank unit and each milk producer is licensed. The rule

clarifies that permitted restaurants do not need a separate dairy plant license if they prepare or process commercially pasteurized dairy products. The rule also exempts retail food establishments from requiring a dairy plant license if they process non-grade "A" dairy products made from commercially pasteurized dairy products solely for retail sale. The rule does not change licensing fees.

Dairy farm rule revisions

The following are among the dairy farm provisions contained in the rule:

- Prohibits locating milkhouse access driveways and doors such that animal waste could be tracked into the milkhouse.
- Clarifies that if a milk producer has more than one well, water from each well shall be tested at least once every two years.
- Recognizes the increasing adoption of modernized milking systems by incorporating PMO requirements for automatic milking installations, or robotic milking systems.
- Prohibits mixing or storage of human waste or septage with animal manure.
- Increases the inspection frequency of Grade "B" dairy farms from two years to one year.
- Slightly modifies the performance-based inspection requirements to ensure compliance with the PMO by prohibiting placement of farms in categories requiring inspection once or twice per year if they have been cited with any violation that presents an imminent health risk or if they've received a warning under s. ATCP 65.923(1) during the past year. Wisconsin issues a warning notice if an inspection finds a violation of a key violation. However, the rule expands the definition of a key violation to include instances when a farm receives one or more identical violations during two consecutive inspections, *i.e.* double debits.

Dairy plant rule revisions

The following are among the dairy plant provisions contained in the rule:

- Requires dairy plants to meet state water regulations and testing of water from a privately owned water system for compliance with safe drinking water requirements.
- Revises a current exemption related to overhead doors and electronic sliding doors in delivery areas, requiring Grade "A" plants to meet PMO requirements that the doors remain closed when not in use.
- Exempts dairy plants from having to clean certain reverse osmosis equipment after each day's use.
- Allows the department to authorize alternative temperature limits for storing non-Grade "A" milk and milk products.
- Exempts acid whey with at least minimum specified percent tritatable acidity or no more than a maximum specific pH from storage time and storage temperature requirements applicable to other dairy products.
- Requires dairy plants to develop a written recall plan for identifying and recalling dairy products should a food recall become necessary.

- Creates an exemption, in certain cases, from the requirement that dairy products shipped in bulk to a licensed food processing plant be pasteurized at the dairy plant where the product was manufactured.
- Allows dairy plants, at their discretion, to waive recovery of the cost of a rejected bulk load if the load is a direct ship load and contains milk from only one producer.

Small Businesses Affected

The proposed rule changes will impact dairy producers and dairy plants, many of which may be small businesses. The proposed rule does not substantially alter requirements dairy-related businesses already meet. The rule does not increase license or permit fees. All Grade "A" dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the FDA's PMO in order to collect, sample, and transport Grade "A" dairy products and no special accommodation may be made for small businesses. The proposed rule does not make accommodations for small Grade "B" dairy businesses. The proposed rule allows Grade "B" businesses to seek variances from some requirements and incorporates more flexibility than for Grade "A" businesses. However, to protect food safety and the quality of Wisconsin milk and milk products, further flexibility based on business size is not possible.

If the proposed rule is adopted, some dairy producers may incur costs if they need to modify access to the milkhous to avoid contamination with animal waste. A few milk producers may also be required to participate in a drug residue prevention program if they have milk samples test positive twice within 12 months or have been reported on the United States Department of Agriculture (USDA) repeat violator list for presenting for slaughter dairy cattle which yield carcasses that have tested positive for drug residues. Some farms may need to have load-out doors installed to meet requirements for the location of bulk transport containers that receive milk directly from the milking equipment ("direct ship" milking). In general, the rule changes are expected to impact only a small number of dairy farms and dairy plants.

Some of the rule changes may result in cost savings or provide other benefits to industry. For example, the rule contains certain exemptions from dairy plant licensing for permitted restaurants and licensed retail food establishments. The rule also allows the Division of Food Safety (DFS) to authorize alternative temperature limits for storing non-Grade "A" milk or milk products. It exempts acid whey with specified percent titratable acidity or pH from storage time and storage temperature requirements applicable to other dairy products. This change is in response to information presented by industry. These two exemptions will result in cost savings for approximately 200 dairy plants.

The proposed rule also assists small businesses by consolidating dairy farm and dairy plant regulations into one rule.

Reporting, Bookkeeping and other Procedures

The proposed rule would not require any additional reporting or bookkeeping, but would require dairy plant operators to prepare a written recall plan.

Professional Skills Required

The proposed rule does not require any new professional skills by small businesses.

Accommodation for Small Business

All Grade "A" dairy farms and dairy plants, whether large or small, must meet regulations that are substantially in compliance with the Food and Drug Administration's Pasteurized Milk Ordinance. No special accommodation for Grade "A" small dairy businesses may be made. Grade "B" dairy farms and dairy plants have more flexibility than Grade "A" dairy businesses, but Grade "B" dairy businesses also must meet certain requirements in order to produce safe, high-quality milk and milk products.

Conclusion

The provisions in this proposed rule will benefit Wisconsin's dairy industry and are expected to impose minor costs for only a few dairy farms and dairy plants.

This rule will not have a significant adverse effect on "small business" and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Dated this 3rd day of December, 2014.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Steven C. Ingham
Steven C. Ingham, Administrator,
Division of Food Safety

**ADMINISTRATIVE RULES
FISCAL ESTIMATE AND
ECONOMIC IMPACT ANALYSIS**

Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

Administrative Rule Chapter, Title and Number

ATCP 65, Milk and Milk Products. This rule replaces ATCP 60, Dairy Farms, and ATCP 80, Dairy Plants.

Subject

Dairy farms, dairy plants, milk and milk product regulations, and affecting small business.

Fund Sources Affected

☒ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

Chapter 20 , Stats. Appropriations Affected

20.115 (1)(a)
20.115 (1) (gb)

Fiscal Effect of Implementing the Rule

☐ No Fiscal Effect

☒ Indeterminate

☐ Increase Existing Revenues

☐ Decrease Existing Revenues

☐ Increase Costs

☒ Could Absorb Within Agency's Budget

☐ Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

☒ State's Economy

☐ Local Government Units

☒ Specific Businesses/Sectors

☐ Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

Policy Problem Addressed by the Rule

The department proposes a comprehensive revision to food safety rules ATCP 60, "Dairy Farms," and ATCP 80, "Dairy Plants." The objective of this proposed rule is to modernize current dairy farm and dairy plant inspection rules to ensure compliance with the federal Food and Drug Administration's (FDA) Pasteurized Milk Ordinance (PMO), accommodate advances in dairying and manufacturing dairy products, and continue ensuring the safety and quality of Wisconsin milk and milk products. FDA revises the PMO every two years and the department must periodically revise its dairy farm and dairy plant rules to incorporate changes in the PMO, ensuring compliance with the PMO. States must meet PMO requirements in order for their grade "A" milk and milk products to be shipped in interstate commerce. The consolidation of ATCP 60 and ATCP 80 into ATCP 65 (Milk and Milk Products) recognizes the growing integration between Wisconsin dairy farms and dairy plants, where dairy plants are sometimes located directly on a dairy farm, and creates a more user-friendly "one-stop" rule for the dairy industry.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Businesses and Business Sectors

The proposed rule changes will impact dairy producers and dairy plants, many of which may be small businesses. The proposed rule does not substantially alter requirements dairy-related businesses already meet. The rule does not increase license or permit fees. All Grade "A" dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the FDA's PMO in order to collect, sample, and transport Grade "A" dairy products and no special accommodation may be made for small businesses. The proposed rule does not make accommodations for small Grade "B" dairy businesses. The proposed rule allows Grade "B" businesses to seek variances from some requirements and incorporates more flexibility than for Grade "A" businesses. However, to protect food safety and the quality of Wisconsin milk and milk products,

further flexibility based on business size is not possible.

If the proposed rule is adopted, some dairy producers may incur costs if they need to modify access to the milkhouse to avoid contamination with animal waste. A few milk producers may also be required to participate in a drug residue prevention program if they have milk samples test positive twice within 12 months or have been reported on the United States Department of Agriculture (USDA) repeat violator list for presenting for slaughter dairy cattle which yield carcasses that have tested positive for drug residues. Some farms may need to have load-out doors installed to meet requirements for the location of bulk transport containers that receive milk directly from the milking equipment ("direct ship" milking). In general, the rule changes are expected to impact only a small number of dairy farms and dairy plants.

Some of the rule changes may result in cost savings or provide other benefits to industry. For example, the rule contains certain exemptions from dairy plant licensing for permitted restaurants and licensed retail food establishments. The rule also allows the Division of Food Safety (DFS) to authorize alternative temperature limits for storing non-Grade "A" milk or milk products. It exempts acid whey with specified percent titratable acidity or pH from storage time and storage temperature requirements applicable to other dairy products. This change is in response to information presented by industry. These two exemptions will result in cost savings for approximately 200 dairy plants.

The proposed rule also assists small businesses by consolidating dairy farm and dairy plant regulations into one rule.

State's Economy

The rule will benefit the state's economy by ensuring Wisconsin's dairy industry meets federal standards for grade "A" milk and milk products. As of October 1, 2014, Wisconsin had 10,157 licensed milk producers and ranked second nationally in milk production. Milk is shipped from each dairy farm to one of more than 400 licensed dairy plants in the state or to a licensed dairy plant in another state. About 98% of the milk produced in Wisconsin is grade "A." Grade "A" unpasteurized milk, along with pasteurized milk and certain other dairy products made from grade "A" milk can only be shipped across state and international boundaries if the production, transportation, processing, and regulatory oversight are in accordance with the PMO.

Local Governmental Units and Public Utility Rate Payers

The rule will have no impact on local governmental units or public utility rate payers.

Economic Impact Analysis Comments

DATCP posted the proposed rule online as required under Wis. Stat. § 227.137 and solicited comments from organizations representing Wisconsin's dairy producers and dairy plants, including the Wisconsin Farm Bureau Federation, Wisconsin Farmers Union, Professional Dairy Producers of Wisconsin, Wisconsin Cheese Makers Association, the Cooperative Network, and the Wisconsin Dairy Products Association. The department did not receive any comments on the economic impact of the rule.

Fiscal Impact

Since dairy farms and dairy plants are already regulated by DATCP, this rule will not have a significant fiscal impact on state government and DATCP will absorb any costs with current budget and staff. This rule will have no fiscal effect on local governments or public utility rate payers.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This rule continues to ensure that Wisconsin's dairy industry meets federal Pasteurized Milk Ordinance (PMO) requirements. Not implementing the rule could jeopardize Wisconsin dairy's world class reputation and Wisconsin could be prohibited from shipping grade A milk and milk products in interstate commerce.

Long Range Implications of Implementing the Rule

There are no long range negative implications of implementing the rule. In the long run, the rule will continue to allow Wisconsin dairy farms and dairy plants to ship grade A milk and milk products in interstate commerce.

Compare With Approaches Being Used by Federal Government

The proposed rule makes Wisconsin's dairy farm and dairy plant regulations more consistent with the PMO. Although compliance with the PMO is technically a voluntary effort by state regulatory agencies, Wisconsin is periodically evaluated by the FDA for compliance with the PMO. Failure to pass the FDA audit would jeopardize the state's interstate and international dairy industry. The rule changes will bring Wisconsin's dairy farm and dairy plant regulations into further compliance with the 2013 revision of the PMO.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Michigan, Minnesota, Iowa, and Illinois adopt the PMO as part of their grade "A" dairy-related statutes and regulations and therefore enforce grade "A" dairy regulations similar to those enforced by Wisconsin. Unlike Wisconsin, none of the surrounding states have adopted performance-based farm inspection, as allowed by the PMO.

Name and Phone Number of Contact Person

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